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Supreme Court of the United States

OCTOBER TERM, 1945.

No. 908.

MARIO MERCADO RIERA, EXECUTOR, ET AL., *Petitioners*,

v.

MARIA LUISA MERCADO RIERA DE BELAVAL, ET AL., *Respondents*.

Petition for Writ of Certiorari to United States Circuit Court of Appeals for the First Circuit.

PETITIONERS' BRIEF IN REPLY TO RESPONDENTS' BRIEF IN OPPOSITION TO THE GRANTING OF THE WRIT.

JURISDICTION OF THIS COURT.

In their brief (p. 3), and by their motion appended thereto for dismissal of the petition (pp. 91-92), respondents challenge the jurisdiction of this court to grant certiorari herein, upon the ground that (as they contend) the petition does not affirmatively disclose that it was filed within three months after entry of final judgment in the Court of Appeals.

Apparently respondents do not mean to contend that a timely petition for rehearing filed in good faith in the United States Circuit Court of Appeals, pursuant to its rules, and duly entertained and denied by that court, does not toll the three months limitation on the filing of a petition for certiorari in this court. If any such contention is intended, it is manifestly in direct conflict with the principle long since established by this court in *Citizens National Bank* v. *Opperman* (1919), 249 U. S. 448, 450, namely, that where a petition for rehearing is entertained by the court below the judgment does not become final for purposes of review by this court until such petition has been denied or otherwise disposed of, and the three months limitation begins to run from the date of such denial or other disposition.

As to the remaining question, whether our petition filed herein on March 4, 1946, for a writ of certiorari, makes a showing that the court below "entertained" our petition for rehearing, sufficient to support the jurisdiction of this court under the established principle above mentioned, we think the answer must be yes; because the action of the Circuit Court of Appeals, in receiving (filing) and denying the petition for rehearing, as set forth in our petition for certiorari and the cited parts of the record, necessarily implies consideration, and thus "entertainment," within the meaning of that principle.

This Court will no doubt take judicial notice of the published rules of the court below, and particularly, in this connection, Rule 29 (prescribing the form of all records, petitions, motions and briefs printed for the use of that court, and providing expressly that the clerk shall refuse to receive any petition, motion or brief printed otherwise than in substantial conformation with the rules), and Rule 32 (providing that a petition for rehearing may be filed with the clerk within fifteen days (thirty days in appeals from Puerto Rico) after judgment is entered, that the petition must be printed, and that it must be supported by

a certificate of counsel to the effect that it is presented in good faith and not for purposes of delay.

Therefrom it appears that the court below, by its own rules, expressly authorizes the filing of petitions for rehearing within specified time limits, and conformably to certain other specified conditions, thus in effect tacitly undertaking to entertain such petitions where they comply fully with those rules. That the court below itself shares that view is shown by its opinion in *Ortiz* v. *Pub. Service Com.*, 108 F. 2d 815, from which we quote as follows (p. 816):

> "It may be that where the published rules of court allow the filing of a petition for rehearing within a stipulated time after entry of the judgment, a petition filed within that time will be regarded as 'entertained,' without more, on the ground that the court is bound to give consideration to a petition for rehearing the filing of which has been invited by its rule. See Rules of this court, Nos. 29 and 32."

Had our petition for rehearing failed in any substantial particular to conform to the rules of the court below, it would manifestly have been the duty of the clerk of that court to refuse to receive and file it. Accordingly, our showing of the filing of that petition on December 21, 1945, fully supports conclusions that it was so filed in complete conformity with all of the pertinent rules of that court, and that that court was bound to, and did, "entertain" it.

That the court below did so "entertain" and consider it is still further indicated by its action in disposing of it by a simple unqualified order of denial, which, as above stated, we believe clearly implies consideration of the merits. If the court had regarded the petition as frivolous, dilatory, contemptuous, or otherwise so objectionable in form or substance as to warrant refusal to entertain it at all, it is logical to suppose the action would have taken the form of an order to strike, quash or dismiss the petition, specifying the reason for such disposition; or at least that the order of denial would have included some statement indi-

cating that such disposition was made without consideration of the merits.

To enable this court to judge for itself whether our petition for rehearing, filed December 21, 1945, in the Court of Appeals, was such as to warrant refusal to "entertain" it, we append hereto the full text of that petition (*infra*, Appendix, pp. 20-33), and ask that it be considered as a part of this brief.

We conclude that the challenge of our resourceful opponents to the jurisdiction of this court, on the ground of inadequacy of the showing in our petition for certiorari that it was filed within the time limit prescribed by law, is legally unsound.

STATEMENT OF THE CASE.

Under the general heading "Statement of the Three Cases Involved" (Resp. Br. in Opp. pp. 3-39), respondents devote 36 pages to a garbled restatement of some of the facts set forth in our brief in support of the present petition for certiorari, coupled with allegations of fact not supported by the record, and mixed with profuse arguments, all apparently designed to sustain their contention, and the holdings of both appellate courts below, to the effect that there was no judicial administration of this estate, and, in effect, that every new petition or motion filed by any party in district court case number 782, from beginning to end, constituted or initiated a new and separate proceeding.

Throughout the entire period of more than four years from the official qualification of Mario Mercado Riera as executor on September 1, 1937, until November 26, 1941, when they first advanced their present contention to the contrary, neither of the respondents ever once challenged the legal authority and powers of the executor to hold and administer the property of the estate as a general executor under judicial supervision, or questioned the jurisdiction of the district court in case number 782, to entertain and pass upon every legal question arising in the administration of the estate. For more than two

years after September 2, 1939, when, they now contend, the terms of the executor and partitioner automatically expired by operation of the Civil Code, each and both of the respondents continued uniformly and repeatedly to recognize and invoke the jurisdiction of the district court in case number 782 as a general testamentary proceeding, by filing petitions and motions in that court, duly entitled in that proceeding, relating to the administration of the estate, signed by their attorneys of record in that proceeding, and served on the executor through his attorneys of record therein.

This is shown first by the total absence from the record of any evidence of any such challenge, during that period, to the power and authority of the executor to have the sole official custody and general management of the estate which he was then exercising with the full knowledge of the respondents, or to the general authority and jurisdiction which the district court was then exercising, also with their full knowledge, in that same case number 782, to supervise and administer the estate as in *custodia legis*.

Next it is evidenced affirmatively, so far as concerns the respondent Maria Luisa, by her general appearance in case number 782, through the same attorneys now still representing her in this case, by her petition filed February 21, 1938, entitled "Civil No. 782. Mario Mercado Riera, *Ex Parte*. Letters Testamentary and Executorship," alleging that the executor was in possession of all of the estate, and praying that the court deny the executor any further extensions of time for making the inventory. It should be observed that this petition was served on the executor through his attorneys of record in the same testamentary proceeding, and that, while alleging the executor to be in possession of the entire estate, it embodied no complaint of impropriety in that fact (R. 209-210), although executors have no such power under the Civil Code.

It is further evidenced affirmatively, as regards both respondents, by their participation in the "Contract of Com-

promise" of September 9, 1938, in numerous provisions recognizing expressly or tacitly the sole custody and administration of the estate by the executor, his exercise of various functions not within the power of civil law executors, and, in paragraph (a) Part Third, expressly providing for the filing of the inventory in the district court for the purposes of actions numbers 782 and 1213 (R. 539-546), although no such filing was required by the Civil Code in number 782.

Again it is evidenced convincingly, as to both respondents, by the original proposed final accounts of the executor, copies of which were furnished each of the other heirs by letter of March 6, 1940, showing that the executor had been exercising all of the functions of an executor under the law of special proceedings, including sole custody of the estate, collection of debts due the estate, payment of obligations of the estate, and other powers not within the authority of a civil law executor (R. 234-242); together with the objections to those accounts, formally entitled by number and caption in case number 782, filed in the district court on March 16, 1940, and served, not on the executor in person, but through his attorneys of record in that case, in which there appear various objections to specific credits taken by the executor, but no objection whatever to his exercise of the functions above described, or to his continuance to act as executor after September 2, 1939, and in which the prayer is simply in substance that the objections be sustained, the account be corrected accordingly, and "the executor" be ordered to reimburse the estate by the amounts of the disputed items (R. 225-234). Note that this was eighteen months after the date, September 2, 1939, on which respondents now contend the executorship had expired.

And to the same effect see:

(1) The supplemental objections to final account, filed by these respondents June 7, 1940, in case number 782, similarly entitled, similarly served on the executor through his attorneys, and similarly lacking any suggestion that his office

had expired, or that the district court was without jurisdiction over the estate or the parties in that case, or that this was a new and separate action. (R. 242-244).

(2) The motion to set the objections down for hearing, similarly entitled and served on the executor through his attorneys, filed August 27, 1940, still frankly recognizing both the continued existence of the executorship and of the jurisdiction of the district court over the estate in case number 782 (R. 245-247).

(3) The acceptance by attorneys for Maria Luisa, on December 30, 1940, of service of the executor's motion for authority to borrow money or sell property to pay debts, entitled and filed in case number 782 (R. 307).

(4) The petition for delivery to them of their shares of the estate, filed by these respondents on October 27, 1941, in district court case number 782, duly entitled by number and style in that case, served on the executor through his attorneys of record therein, expressly referring to Mario Mercado Riera in the present tense as "said executor" (R. 348-360).

(5) The motion of Attorneys Zapater and Ochoteco, duly entitled by number and style in case number 782, filed November 18, 1941, with acceptance of service thereon by Jose A. Poventud, as attorney for Adrian Mercado Riera, on that date (R. 366-369).

(6) The motion of the executor, filed November 21, 1941, for authority to use certain funds on deposit and sell certain property to pay legacies, bearing acceptances of service by Celestino Iriarte, as attorney for Maria Luisa, on November 18, 1941, and Mr. Poventud, as attorney for Adrian, on November 19, 1941 (R. 377-379). It should be observed that it was not until December 14, 1942, more than a year later, that the respondents, through those same attorneys, filed their motion to quash the service thus accepted by their said attorneys (R. 461-462).

As examples of many wholly unsupported and erroneous averments in the "Statement" of respondent's brief, we cite the first two paragraphs under the subtopic "Certiorari No. 1517," etc., on page 13, where respondents, referring to their petition of October 27, 1941, for immediate delivery to them of their shares of the estate (*supra*, p. 7), describe that petition as one "for the surrender or delivery to the heirs and co-owners of the properties of the estate," declare (in italics!) that "this proceeding [i. e. their original petition and the ensuing Certiorari No. 1517] arose out of sections 832 and 833 of the local Civil Code" [those sections name certain contingencies in which executorships administered solely under that Code terminate and their functions devolve upon the heirs], and later refer to their original petition as one "for the return *to the heirs* of the hereditary assets." The facts in that regard, as can be readily verified by reference to their said petition (R. 348-360), are that respondents did not anywhere in that petition mention those sections of the Civil Code, under which they now claim it was brought, did not anywhere therein allege that the executorship had expired, did not even allege therein the basic facts that would have been necessary to bring the executorship within the application of those sections of the Civil Code, and, even more significantly, did not even pray for delivery of the estate or of the functions of the executorship to all of the heirs jointly, but only (R. 358; italics ours):

> "(1) With respect to aforesaid hereditary properties, community properties, rights and choses in action *belonging to these petitioners* and in the power of Mario Mercado Riera, *petitioners pray the court to order the said Mario Mercado Riera to deliver them to or make available to aforesaid petitioners* together with the corresponding titles, papers or documents;"

Even in their motion, filed November 26, 1941, to quash service on them through their attorneys of the motion of Attorneys Zapater and Ochoteco to fix fees (R. 380-381),

which led to the certiorari proceeding numbered 1516 in the insular supreme court, and in which for the first time respondents raised their belated contention that the executorship had expired in 1939, then two years and more past, respondents did not pray for delivery of the estate and functions of the executorship to the heirs, but only that the court quash the mentioned service; and this is equally true of their motion of December 14, 1942 (R. 461-462), to quash the service upon them accepted by their attorneys more than a year before, of the executor's motion [petition] for authority to use certain assets of the estate to pay legacies, which led to the proceedings in insular supreme court number 1518.

[Thus, incidentally, it appears conclusively from the record that the judgment of the insular supreme court in Certiorari Number 1517, and the corresponding affirmatory judgment of the Circuit Court of Appeals, grant relief to the respondents for which they did not pray in the court of first instance, namely, an order directing the executor to deliver the estate and the further execution of the will to all of the heirs jointly, without regard to the formal distribution required by the will, the law, and the written contract of the parties, and without regard to the orderly settlement of the estate].

Also confusing and misleading is respondents' argument (Br. in Opp., p. 20), to the effect that Mr. Porrata, by his alleged voluntary intervention in the insular supreme court in case number 1517, invoked its jurisdiction on the merits to set aside the writ of review, and was, therefore fully heard in every respect. In support of that proposition respondents cite in a footnote (No. 17, p. 20), some Puerto Rican Supreme Court and federal court cases, including two decisions of this court, relating without exception to the status of an intervenor before a court or tribunal of first instance, and having no logical bearing on Porrata's standing as a party when, after being served with process, he intervened in the insular supreme court, to protect himself

against the attempt of these respondents to have his status and rights as partitioner of the Mercado estate adjudicated there upon a record of proceedings in the trial court in which he had had no opportunity to present his evidence or be heard at all. Do respondents mean by this devious argument to contend that because Porrata, after having been formally served by the respondents with their petition and writ in Certiorari No. 1517, intervened in this case in the insular supreme court, and was heard in argument before that appellate tribunal, he had no right to appeal from its judgment to the Court of Appeals, and has no right to ask this court to review by certiorari and reverse the refusal of that court to entertain his complaint of lack of due process in the judgment of the insular supreme court against him? Do they mean to contend that Porrata, by his intervention and argument before the insular supreme court, waived the very right for which he was contending—the right to due notice and hearing in the trial court? If so, their contention is manifestly absurd. If they do not mean to so contend we are at a loss to understand the purpose of the argument, unless it be to obscure the real question Porrata presents here, which is simply whether the insular supreme court, upon review by certiorari of the proceedings of a district court, can lawfully enter judgment against a party who was accorded no notice or hearing in the district court upon the issues adjudicated against him by the supreme court. See Petition and Supporting Brief herein, Point III, pp. 39-61, and Porrata's separate Brief in Reply to Respondents' Brief in Opposition.

Referring to respondents' statement on page 29 of their brief in opposition, that petitioners herein seem to intimate that there was only one case below affecting the administration of the estate, petitioners disclaim any such intimation. As we have clearly shown in our petition for certiorari, under "Chronology," pages v to xii, there were precisely four separately numbered cases, all initiated by various parties within a few months after the death of the testator, namely:

Civil No. 764, initiated August 28, 1937, by the petition of Benigno Fernandez Garcia, custodian of the will, presenting the will for examination, probate and registration (R. 498-500).

Civil No. 782, initiated September 1, 1937, by the petition of Mario Mercado Riera, executor, for letters testamentary (R. 191-192).

Civil No. 802, initiated September 8, 1937, by the petition of Pedro M. Porrata, testamentary partitioner, for judicial credentials as such (R. 793-794).

Civil No. 1213, initiated by Adrian Mercado Riera, one of the heirs and one of the present respondents, by petition filed January 24, 1938, praying that he be adjudged an acceptor with benefit of inventory.

Of the four separately numbered cases above mentioned, number 764 was finally adjudicated and closed by admission of the will to probate and registration on August 30, 1937 (R. 521-523); number 802 was finally adjudicated and closed by issuance of the judicial credentials sought by Mr. Porrata therein, on September 8, 1937 (R. 793-794); number 1213 was finally adjudicated and closed by the district court's order of September 12, 1938 (R. 891-892); and number 782, from that time on to the present day, has remained the sole and only separately numbered and styled proceeding in the district court relating to the executorship and the estate here involved, and has been the proceeding in that court in which every party concerned, including these respondents, uniformly have entitled and filed all motions, petitions and papers whatsoever concerning the administration of the estate, requiring judicial attention or action.

It is true that in the early days of the executorship, Petitioner Porrata believed and unsuccessfully contended that the executorship was of the Civil Code type, limited in its powers by section 824 of that Code (Pet. and Br., App., p. 89), precisely as these respondents are now contending, but that contention was then opposed by these respondents, and was in effect overruled by the district court on March 2,

1928 (R. 811-812), by the decision upheld by the insular supreme court on April 29, 1938, in *Porrata* v. *District Court,* 53 P. R. R. 140. Thereupon Mr. Porrata accepted the views of the district and insular supreme courts in that regard, and has ever since considered and treated the executorship as one under judicial administration, and the estate as in *custodia legis,* according to the pertinent provisions of the Code of Civil Procedure, a view which the executor, the district court and all concerned, excepting these respondents, have ever since held, and which even the present respondents obviously shared until they suddenly found it expedient to assert a different contention in this litigation on November 26, 1941, more than three and a half years later.

ARGUMENT.

I.

A. Respondents (Br. in Opp., p. 40-43) characterize as "timid" our statement (Pet. and Br., p. 26, par. G) that it is of course to be presumed that the Congress, in directing by Section 40 of the Organic Act that the jurisdiction and procedure of the insular courts should continue as then provided, intended to continue then existing pertinent laws in effect, with the judicial interpretations that had theretofore been put upon them by the courts, and respondents challenge the soundness of that view.

The principle to which we there referred is well settled. It has been applied by this court in holding that a statute adopted from another state will be presumed to have been adopted with the construction previously placed upon it by the courts of that state, *Henrietta Min. & Mill. Co.* v. *Gardner,* 173 U. S. 123; *Interstate Commerce Com.* v. *Baltimore & O. R. Co.,* 145 U. S. 263; and that when the Congress adopts a statute substantially as it exists in the legislation of a state, it adopts also the known and settled construction given to it by the courts of that state. *Willis* v. *Eastern Trust & Banking Co.,* 169 U. S. 295.

A more recent application of the same principle appears in the 1942 opinion of the Second Circuit Court of Appeals in *Hoffman* v. *Palmer*, 129 F. 2d 976 (affirmed, 318 U. S. 109), where the court, referring to an act of Congress adopted verbatim from New York State legislation, declared (p. 985):

> "It is a general rule that where a statute has been previously enacted in another jurisdiction, interpretations by its courts before its enactment in another jurisdiction are to be followed because the statute 'generally is presumed to be adopted with the construction which it has received.' Holmes J., in James v. Appel, 192 U. S. 129, 135."

Respondents (Br. in Opp., pp. 42-43), cite Sections 6 and 81 of the Organic Act of Hawaii (48 U. S. C. 496 and 631), continuing in force the laws and tribunals then existing, and argue that notwithstanding those sections, this court has always accepted decisions of the Hawaiian Supreme Court, as stating the law of that territory, citing *Waialua Agricultural Co.* v. *Christian*, 83 L. Ed. 61, 72 (305 U. S. 91, 109). The implication from this argument would be that the respondents intend to say that this court held in the cited case that the meaning of local Hawaiian statutes as construed by local courts at the time of the adoption of the Organic Act of Hawaii, could be changed by rulings of the Hawaiian Supreme Court rendered subsequent to such adoption. Such a contention is wholly unwarranted. That case did not involve any issue of the effect of the cited provisions of the Organic Act of Hawaii at all comparable to the issue raised in this case with relation to the effect of Section 40 of the Puerto Rican Organic Act. Furthermore, all that this court said in that case about the weight of holdings of the Hawaiian Supreme Court was simply (305 U. S. 109; italics supplied):

> *"In so far as the decisions of the Supreme Court of Hawaii are in conformity with the Constitution and applicable laws of the United States and are not mani-*

festly erroneous in their statement or application of governing principles, they are to be taken as stating the law of the Territory."

B. Equally inapposite here is *Ortega* v. *Lara,* 50 L. Ed. 1055 (202 U. S. 339), which is cited by respondents (Br. in Opp., p. 43), to the proposition that the saving provisions of the first Organic Act for Puerto Rico, approved April 12, 1900, did not make Federal statutes out of the local laws thereby continued in effect. The local statute involved in that case (Section 44 of the Old Civil Code) *had been repealed by the legislature* before the alleged cause of action arose, and so could not provide a basis for any claim of any kind, to say nothing of a claim of deprivation of any right under federal law. It is true that the court remarked incidentally, and clearly as dictum, in substance, that it did not believe the savings provisions had transformed the local statutes continued in effect into federal statutes, and we have no quarrel even with that dictum. Here we are dealing not with a mere saving clause, but with Section 40 of the Organic Act of 1917 (Pet. & Br., p. 22), relating specifically to the jurisdiction and procedure of Puerto Rican courts, and prescribing in mandatory terms that such jurisdiction and procedure should continue as then provided by law, until otherwise provided by law.

Our learned opponents argue (Br. in Opp., pp. 44-45), that the insular supreme court had, prior to enactment of the Organic Act of 1917, held that its power to grant review by certiorari is *discretionary,* the inference apparently sought to be conveyed by this argument being that the court had held that it could grant certiorari in any case at its discretion. However, an examination of the cases cited by respondents to that proposition, namely *Nunez* v. *Soto Nussa, District Judge* (1908) 14 P. R. R. 190, and *Sanchez* v. *Cuevas Zequeira* (1915), 23 P. R. R. 47, reveals that neither sustains that proposition. In the Nunez case, the court simply held that the existence of a remedy by appeal or writ of error did not bar certiorari in an otherwise proper

case. In that case the court granted certiorari to review a judgment of the district court committing the petitioner to jail for alleged contempt in violating an injunction void because issued without jurisdiction. The opinion says nothing about the granting of the writ being discretionary in all cases. Similar remarks apply to the *Sanchez* case. There too the court entertained certiorari to grant relief from a void injunction, and simply held again that the existence of a right of appeal did not bar certiorari in the special and emergent circumstances of that case.

II.

Respondents' Point II (Br. in Opp., pp. 47-54), asserting Petitioner Porrata to be without reviewable interest, etc., is fully treated in our Petition and Supporting Brief, under the heading "Opinion of Circuit Court of Appeals" (pp. 51-57), and in the accompanying separate Brief of Petitioner Porrata in Reply to Respondents Brief in Opposition.

III.

Respondents argue (Br. in Opp., pp. 54-58) that no federal question was properly raised in, or even passed upon by, the insular supreme court.

In so far as this argument relates to the federal constitutional question presented here by the Petitioner Porrata (Pet. and Br., Point III, pp. 39-61), our reply appears in the accompanying separate reply brief filed herein on behalf of Mr. Porrata, at pages 7-8 and 17-18.

So far as the argument relates to Petitioner Mercado, and the two federal questions presented on behalf of both petitioners jointly in our Petition and Supporting Brief, Points I (pp. 22-33) and II (pp. 33-39), we beg only to remind the court that both are questions of the lawful jurisdiction of the insular supreme court under federal law, over the subject matter of this case. It need hardly be said that this court can take notice of a lack of jurisdiction of the subject matter, on the part of any subordinate court, regardless of whether the question was raised below. Such a lack of juris-

diction cannot be waived or supplied, even by express agreement of the parties, much less by a simple failure of a party to observe and object to it at the time. The court will take notice of such a lack of jurisdiction in any case at any time, and it is its duty to do so, upon the suggestion of any of the parties, or even upon its own motion whenever detected. We consider these principles too well established to call for further argument, or the specific citation of precedents.

IV.

Respondents' Point IV (Br. in Opp., pp. 59-61), is devoted to an effort to meet our Point II (Pet. and Br., pp. 33-39), dealing with the second of the federal questions presented by petitioners here, namely that even if the insular supreme court be held to have had jurisdiction to review and annul the district court orders in question, it certainly had no power under Section 40 of the Organic Act to substitute for one of them its own order directing disposition of the estate.

Respondents here again reiterate their objection to consideration of that point by this court on the ground that the question was not raised before the insular supreme court. As the question is one of the jurisdiction of the insular supreme court over the subject matter of this case, what we have just said in that connection under III above, applies here; that is, in substance, that such a question can be raised at any time and a failure to raise it below is no bar to its consideration here.

As to the remaining argument presented by respondents on this point, it does not appear to us to be logically responsive to what is said on the subject in our petition and supporting brief, and we do not regard any part of it as of sufficient merit to call for reply.

V.

Under the corresponding subdivision V of their brief in opposition, respondents first take issue with our statement (Pet. and Br., p. 38, par. g), that the insular supreme court,

while holding in effect that the district court had never had, or had long since lost, jurisdiction over the estate [in case number 782], nevertheless undertook simultaneously to assume that very jurisdiction over the estate which it was holding the district court did not have, and to enter judgment in the same testamentary proceedings which, according to its theory were not lawfully in court, directing the executor (former executor according to its theory) immediately to surrender custody of the estate to the heirs jointly. Respondents declare that statement to be hesitating, argumentative and quite erroneous, but then proceed to quote from the opinion of the insular supreme court a passage which, considered with its context, fully proves the truth of our statement.

Of course, in that statement, we were not contending, as respondents apparently profess to believe we were contending, that the insular supreme court opinion holds the district court to have been without general power to accept and exercise jurisdiction over any other separate proceedings affecting this estate which might have been properly initiated. What we were contending, and we confidently reiterate the contention here, was that the insular supreme court held the district court without jurisdiction in its testamentary proceeding number 782 to deny the petition and motions in question, because, according to the theory of that court, the executorship and estate were not under judicial administration in that proceeding. As above indicated, that view of the substance of the holding is amply borne out by the whole opinion of that court, and particularly by the extract quoted by respondents.

Nevertheless, the insular supreme court inconsistently and erroneously undertook to assume and exercise an administrative jurisdiction over the estate which it could have derived only through the district court, and which it was simultaneously holding the district court did not possess, namely jurisdiction in that same proceeding to supervise the executorship, and actually to direct disposition of the estate by the executor.

We find nothing further under respondents' Point V which, in our opinion merits reply, except certain contentions relating to Petitioner Porrata's status, rights and duties, which are fully dealt with in Porrata's separate reply brief filed herewith.

VI.

Under this heading in their brief in opposition (pp. 76-89), respondents assail our Point IV (Pet. and Br., pp. 62-76), to the effect that even as a matter of purely local law the judgment of the insular supreme court was patently and inescapably wrong, and their attack consists mainly of copious quotations from the opinion of the insular supreme court in this case, with supplied emphasis here and there. Petitioners freely concede that the opinion and judgment of that court were in favor of the respondents.

The only argument we find worthy of reply under Part VI of the opposing brief is respondents' declaration that it is the settled rule in Puerto Rico that a judicial administration for a hereditary estate can never arise there by estoppel or implication, but must be applied for by petition setting out the necessary and jurisdictional facts, and must always be judicially decreed (Br. in Opp., p. 85).

To that proposition respondents cite seven insular supreme court cases, each citation followed by a parenthetical comment purporting to state the holding. Attention is invited to the fact that even according to respondents' parenthetical comments last mentioned, not one of these cases provides any tangible support for the broad rule asserted by respondents. Upon actual examination of the cases we reach the same conclusion. Not one of them even mentions estoppel, or deals with any issue at all comparable to that raised in this connection by these petitioners.

CONCLUSION.

The petition should be granted, and in due course the judgments of the Court of Appeals and insular supreme court should be reversed.

Respectfully submitted,

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